

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 10-O-02007-RAP
)	
SYDNEY KEYTH ERICSON)	
)	DECISION
Member No. 50457)	
)	
<u>A Member of the State Bar.</u>)	

I. Introduction and Pertinent Procedural History

This default matter was submitted for decision on August 20, 2010. At the time of submission, the Office of the Chief Trial Counsel of the State Bar of California (“State Bar”) was represented by Deputy Trial Counsel Elina Kreditor. Respondent Sydney Keyth Ericson (“respondent”) did not participate, and this matter proceeded by way of default.

The State Bar filed a Notice of Disciplinary Charges (“NDC”) against respondent on May 24, 2010. A copy of the NDC was properly served on respondent that same day, in the manner set forth in rule 60 of the Rules of Procedure of the State Bar of California (“Rules of Procedure”).¹ The State Bar subsequently received a signed return receipt card.

¹ Unless otherwise indicated, all documents were properly served pursuant to the Rules of Procedure.

Respondent did not file a response to the NDC. Therefore, on July 15, 2010, the State Bar filed and properly served a motion for the entry of respondent's default.²

Respondent failed to file a written response within ten days after service of the motion for entry of his default. Therefore, on August 2, 2010, the court filed an order of entry of default and involuntary inactive enrollment.³ A copy of said order was properly served on respondent at his membership records address. This copy was not subsequently returned to the court by the U.S. Postal Service as undeliverable or for any other reason.

Thereafter, the State Bar waived the hearing, and this matter was submitted for decision.⁴

The State Bar's and the court's efforts to contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (2006) 547 U.S. 220 [126 S.Ct. 1708, 164 L.Ed.2d 415].)

II. Findings of Fact & Conclusions of Law

All factual allegations contained in the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

²The motion also contained a request that the court take judicial notice of all of respondent's official membership addresses. The court grants this request.

³Respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (e), was effective three days after the service of this order by mail.

⁴Exhibit 1 attached to the State Bar's July 15, 2010 motion for the entry of respondent's default and Exhibits 1-3 attached to the State Bar's August 20, 2010 discipline brief are admitted into evidence.

A. Jurisdiction

Respondent was admitted to the practice of law in California on January 5, 1972, and has been a member of the State Bar of California at all times since that date.

B. Findings of Fact

On August 11, 2008, respondent entered into a stipulation regarding facts, conclusions of law, and disposition in State Bar Court case no. 06-O-11414, including a stipulation that respondent would comply with probation conditions.

On December 24, 2008, the California Supreme Court filed an order in case no. S167777 approving the stipulation reached in case no. 06-O-11414. The Supreme Court ordered that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that respondent be placed on probation for three years with conditions, including that he be actually suspended for thirty days. On or about December 24, 2008, the California Supreme Court clerk served a copy of the order on respondent by mail. Respondent received a copy of the order. The order was effective January 23, 2009.

Pursuant to the Supreme Court's order, respondent was required to comply with numerous conditions of probation, including:

- i. Complying with the State Bar Act and the Rules of Professional Conduct during the probation period;
- ii. Submitting written quarterly reports to the Office of Probation ("Office of Probation") on each January 10, April 10, July 10 and October 10 of the period of probation, certifying under penalty of perjury whether he had complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter; and
- iii. Providing proof to the Office of Probation of attendance at a session of the Ethics School, and passage of the test given at the end of that session within one year of the effective date of discipline—by January 23, 2010.

Respondent did not timely file the quarterly report due on January 10, 2010, for the quarter ending on December 31, 2009. Respondent filed this report on January 12, 2010.⁵

Respondent did not attend a session of Ethics School and submit proof of attendance to the Office of Probation by January 23, 2010. As of May 24, 2010, respondent had not attended a session of Ethics School or submitted proof of attendance to the Office of Probation.⁶

C. Conclusions of Law

1. Count One: Business and Professions Code Section 6068, Subd. (k)⁷ [Failure to Comply with Conditions of Probation]

Section 6068, subdivision (k), provides that it is the duty of an attorney to comply with all conditions attached to any disciplinary probation. By failing to timely submit to the Office of Probation the quarterly report due on January 10, 2010, and failing to attend Ethics School and file proof of completion of Ethics School with the Office of Probation, respondent failed to comply with the conditions of his disciplinary probation in willful violation of Business and Professions Code, section 6068, subdivision (k).

III. Mitigating and Aggravating Circumstances

The parties bear the burden of proving mitigating and aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2.)⁸

⁵ The NDC also alleged that “[r]espondent did not file the quarterly report for the quarter ending on June 30, 2010, due on July 10, 2009.” While this allegation clearly contains a typographical error, it is not clear which quarterly report respondent actually failed to file. Consequently, the State Bar failed to prove this allegation by clear and convincing evidence.

⁶ The NDC was filed on May 24, 2010. There is no indication in the record that respondent has complied with these conditions of probation since May 24, 2010.

⁷ All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

A. Mitigation

No mitigating factors were submitted into evidence and none can be gleaned from the record.

B. Aggravation

Respondent's prior record of discipline includes two previous impositions of discipline. (Std. 1.2(b)(i).)

On December 24, 2008, the California Supreme Court issued an order (S167777) suspending respondent from the practice of law for two years, stayed, with a three-year probationary period, including a 30-day actual suspension. This discipline resulted from respondent's acquisition of a pecuniary interest adverse to his client without full written disclosure of the terms of the transaction. In aggravation, respondent caused harm to his elderly client. In mitigation, respondent was candid and cooperative with the State Bar and had no prior record of discipline in 35 years of practice.

On September 28, 2010, the California Supreme Court issued an order (S184694) suspending respondent from the practice of law for two years, stayed, with a 90-day actual suspension and until the State Bar Court grants a motion to terminate respondent's actual suspension pursuant to rule 205 of the Rules of Procedure.⁹ This discipline stemmed from a default proceeding in which respondent was found culpable, in a single-client matter, of failing to communicate, failing to account, and failing to release a client

⁸ All further references to standard(s) are to this source.

⁹ The Supreme Court's order was filed after the State Bar filed its discipline brief in this proceeding. Therefore, the State Bar was unable to introduce certified copies of respondent's prior record in Supreme Court case number S184694. Due to these unusual circumstances, the court has independently obtained copies of respondent's disciplinary record involving this case number. The court hereby directs the Clerk to mark respondent's prior disciplinary record in Supreme Court case number S184694 as a court exhibit in this proceeding and to include that exhibit as a part of the record that is transmitted to the Supreme Court.

file. In aggravation, respondent had a prior record of discipline. No mitigating factors were found.

IV. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.) In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.)

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) The standards are not mandatory; they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline.

Standard 2.6 applies in this matter. This standard states that the culpability of a member of a violation of section 6068 must result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

Due to respondent's prior record of discipline, standard 1.7(b) is also applicable. Standard 1.7(b) provides that, if a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding must be disbarment unless the most compelling mitigating circumstances clearly predominate.

The Supreme Court and Review Department have not historically applied standard 1.7(b) in a rigid fashion. Instead, the courts have weighed the individual facts of each case, including whether or not the instant misconduct represents a repetition of offenses for which the attorney has previously been disciplined. (*In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966, 977.) When such repetition has been found, the courts have typically found disbarment to be the appropriate sanction. (See *Morgan v. State Bar* (1990) 51 Cal.3d 598, 607; *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841; *In the Matter of Thomson, supra*, 4 Cal. State Bar Ct. Rptr. at p. 977.)

Here, the State Bar has requested that respondent be disbarred. In support of its position, the State Bar cites *In the Matter of Grueneich* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 439. The Review Department's discussion in *Grueneich*, however, focused on a violation of California Rules of Court, rule 9.20 ("rule 9.20").¹⁰ The present matter does not involve a violation of rule 9.20 and is therefore clearly distinguishable from *Grueneich*.

¹⁰ A willful failure to comply with rule 9.20 is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.)

Instead, the court finds *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, to be instructive. In *Meyer*, the attorney, who had twice been disciplined in the past, was found culpable of violating the conditions of his private reprobation by failing to file two probation reports, filing another probation report late, and failing to certify that he had completed six hours of continuing legal education. In aggravation, the attorney committed multiple acts of misconduct, displayed indifference towards rectification, failed to participate in the disciplinary proceedings, and had a prior record of discipline.¹¹ No mitigating factors were found.

The Review Department concluded that the nature and extent of Meyer's prior records of discipline were insufficient to justify a disbarment recommendation pursuant to standard 1.7(b). It was therefore recommended that he be suspended for two years stayed, with three years' probation, and 90 days actual suspension.

Although respondent's prior record is more egregious, the court finds that the present matter shares many similarities with *Meyer*. Both cases stemmed from probation/reprobation violations. Both respondent and Meyer had been disciplined twice in the past. And both matters proceeded by default.

Like *Meyer*, the court finds that the facts and circumstances involved in the instant case warrant an imposition of discipline less than disbarment. That being said, the instant case merits considerably more discipline than *Meyer*, due to the more extensive scope of respondent's prior record of discipline.

Therefore, the court recommends, among other things, that respondent be suspended from the practice of law for three years, that execution of that period of suspension be stayed, and that respondent be suspended from the practice of law for a

¹¹ The attorney's prior record of discipline consisted of two private reprovals.

minimum of one year and until the State Bar Court grants a motion to terminate his suspension pursuant to rule 205 of the Rules of Procedure.

V. Recommended Discipline

The court recommends that **Sydney Keyth Ericson**, State Bar Number 50457, be suspended from the practice of law in California for three years, execution of that period of suspension to be stayed subject to the following conditions:

1. Sydney Keyth Ericson is suspended from the practice of law for a minimum of one year, and he will remain suspended until the following requirements are satisfied:
 - i. The State Bar Court grants a motion to terminate his suspension pursuant to rule 205 of the Rules of Procedure of the State Bar. Sydney Keyth Ericson must comply with the conditions of probation, if any, imposed by the State Bar Court as a condition for terminating his suspension; and
 - ii. If he remains suspended for two years or more as a result of not satisfying the preceding condition, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

The court also recommends that Sydney Keyth Ericson be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.¹² Failure to do so may result in disbarment or suspension.

¹² Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

It is not recommended that respondent be ordered to successfully pass the Multistate Professional Responsibility Examination as he was ordered to do so in Supreme Court matter S184694.

VI. Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: October 19, 2010.

RICHARD A. PLATEL
Judge of the State Bar Court